

# **EXHIBIT 5**

**Gershoni, Michael**

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**From:** John Durrant <john@durrantlawfirm.com>  
**Sent:** Wednesday, July 12, 2023 12:59 AM  
**To:** Gershoni, Michael  
**Cc:** 'Zak Kurtz'; xNIKE v. Kiy  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)  
**Attachments:** 230711 Deposition Notice Donald Kelsey July 25 at 8am.pdf; 230711 Deposition Notice of Charles Williams July 19 at 2pm.pdf; 230711 Deposition Notice of Forbes Campbell July 19 at 8am.pdf; 230711 Deposition Notice of Jeff Atienza July 18 at 8am.pdf; 230711 Deposition Notice of Tinker Hatfield July 20 at 11am.pdf; 230711 PMK Deposition Notice to Nike July 20 8am.pdf

External E-mail

Michael –

Please see the attached notices of deposition. We have two depositions on one day and have started the days at 8 am. My hope is that starting early will allow us to end the days early and that it will work better for folks on the East Coast.

We have scheduled Mr. Hatfield on a day that I have a morning hearing for 11am. We understand that Mr. Hatfield joined Nike in 1985, when Nike released the Jordan-1 and has been the Nike's Vice President for Design and Special Projects, leading the design work on many variants of the Jordan, including numerous reissues of the Jordan-1. As such, he would appear to have knowledge about the design of the shoes and how the market responds to such designs and why. He also likely will have a very intimate understanding of the sneaker market in the 1980s, particularly Jordan-inspired shoes made by other manufacturers and Nike's view of them. He will also likely have knowledge about the sneaker market prior to the manufacture of the Jordan-1. Nike's complaint discusses the history of the Jordan sneaker and so we should be able to inquire of Mr. Hatfield accordingly regarding these matters. He has personal knowledge of the relevant events (and is probably among the most qualified persons to testify regarding such matters to the extent he testifies as a PMK). We have dropped Kelly Hibler as a witness to make room for Mr. Hatfield.

Regarding the PMK notice, you can see the topics listed in the Notice. We were trying to be helpful with our suggestion below and are somewhat confused by your response. It appears you may be saying that your identified witnesses are each likely to be your PMKs on one or more topics. If that is the case, we need to clarify what topics in our PMK Notice each witness will cover – if they are not each covering all of them – and that you will not require us to issue a further deposition notice or notices to that effect. My hope is to handle these depositions efficiently and avoid having the same person sit twice, and at the end of the process we have had an opportunity to inquire about the topics in our PMK deposition notice (i.e., not just the matters in your disclosures, though there is overlap). It may be that we move one of the depositions on 7/18 to 7/20 if there is no need for a separate PMK deposition; and that way we are not double booked.

Please let us know if you plan to examine your own witnesses in the deposition.

Please let me know if you have any questions. But hope this helps with your travel plans.

Best,  
John Durrant

**John Durrant, Esq.**

*Founder and CEO*

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Los Angeles, California  
90077

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**From:** Gershoni, Michael <Michael.Gershoni@arnoldporter.com>

**Sent:** Tuesday, July 11, 2023 1:56 PM

**To:** john@durrantlawfirm.com

**Cc:** 'Zak Kurtz' <zak@sneakerlawfirm.com>; xNIKE v. Kiy <xNIKEv.Kiy@arnoldporter.com>

**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

Hi John,

We disagree with your characterization of Nike's statements to the Court. We think the Court's order speaks for itself. Regarding the issues you raise below:

- **Depositions of Nike's witnesses:** As we mentioned in our July 10th letter, Nike's witnesses and defending counsel will be in-person in Portland, Oregon, but we are amenable to you appearing remotely by Zoom.
- **Kelly Hibler:** We inquired as to alternative dates for Mr. Hibler after July 18th in view of your request below. Mr. Hibler is available for deposition on Wednesday, July 19th.
- **Tinker Hatfield:** As we understand it, Mr. Hatfield does not have unique knowledge pertinent to the issues in this case. Please provide your basis for seeking Mr. Hatfield's deposition.
- **Nike's "PMK":** In your July 8, 2023 letter, you asked us to identify "Nike's likely PMK regarding issues in this case." It's not clear to us what you are referring to as Nike's "likely PMK" or which issues in the case you are referencing. Please clarify.

To the extent you're asking us to identify which persons Nike may use to support its claims and defenses, Nike identified such persons and the subjects of information they are knowledgeable about in its initial disclosures and supplements thereto, including Charles Williams, Jeff Atienza, Donald Kelsey, and Forbes Campbell.

Please serve your notices of deposition for Nike's witnesses today so that we can make reasonable travel arrangements.

Best,  
Michael

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**From:** John Durrant <[john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)>  
**Sent:** Tuesday, July 11, 2023 3:10 PM  
**To:** Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>  
**Cc:** 'Zak Kurtz' <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; xNIKE v. Kiy <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

External E-mail

Just wanted to follow up – we do want to get our notices out today, so visibility on the PMK, in particular, will be helpful, because we won't need to take an individual deposition of a person acting as PMK.

Thank you,  
John Durrant

**John Durrant, Esq.**  
*Founder and CEO*

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Los Angeles, California  
90077

**Email:** [john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)

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**From:** John Durrant <[john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)>  
**Sent:** Tuesday, July 11, 2023 10:05 AM  
**To:** 'Gershoni, Michael' <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>  
**Cc:** 'Zak Kurtz' <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; 'xNIKE v. Kiy' <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

Michael and Bridgette –

As I understand the Court's Order, our clients must attend depositions by the discovery cut-off but not this week; in effect, we got the depositions this week postponed. So, yes, we will not proceed this week. Please cancel any court reporters, etc. I will check on my clients' availability prior to July 25. I said that we would live with the Court order; if the deadline didn't move we were going to attend depositions under the schedule set by the Court. I don't appreciate your statements to the Court indicating that we would not do that. In the future, if you want to talk, please reach out by email so that I can schedule a conversation with Mr. Kurtz on the line. But it may be better just to communicate in writing.

A few issues related to this:

1. Mr. Weeks currently lives in Los Angeles, not New York.
2. You indicated a willingness to have us take depositions by Zoom, we would want to do that.
3. Either Mr. Weeks or Mr. Arvinger will be By Kiy's PMK; can we just handle both depositions, individual and PMK, in the same session? That will help us free up a day. I don't think you will get squeezed on time, but you could have additional time as needed.
4. On Nike's depositions, please send us the availability of Mr. Hibler for a date after the 18<sup>th</sup> and please send us the availability of Tinker Hatfield, as we have requested.
5. Who is Nike's PMK?

Thanks,  
John Durrant

**John Durrant, Esq.**  
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**From:** Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>  
**Sent:** Tuesday, July 11, 2023 9:35 AM  
**To:** [john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)  
**Cc:** 'Zak Kurtz' <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; xNIKE v. Kiy <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

Hi John,

Pursuant to the Court's Order today, we understand that By Kiy will provide proposed dates for the depositions of defendants by July 14, 2023 at 5:00 p.m. We further understand based on your representation to the Court that "defendants cannot appear for depositions on July 12-14[.]" ECF No. 79 at 10.

To avoid unnecessary cost, please immediately (and by no later than 3 PM ET/12 PM PT) confirm that defendants will not appear for depositions on July 12-14.

Best,  
Michael

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**From:** John Durrant <[john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)>  
**Sent:** Monday, July 10, 2023 10:16 PM

**To:** Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>  
**Cc:** 'Zak Kurtz' <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; xNIKE v. Kiy <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

External E-mail

Please see attached correspondence.

**John Durrant, Esq.**

*Founder and CEO*

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**From:** John Durrant <[john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)>

**Sent:** Monday, July 10, 2023 5:56 PM

**To:** Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>

**Cc:** Zak Kurtz <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; xNIKE v. Kiy <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>

**Subject:** Re: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

Michael—

Your letter is incorrect. We have said we will abide by the Court's order. We did not say — and I was explicit on this point today when we talked — that we were not producing anyone for deposition on any day.

We moved ex parte in order to get court authorization to postpone the depositions for the reasons stated in our papers. I believe we have good cause but it is up to the Court to decide. If we were planning on simply disregarding your notices, we would have done so and had you move to compel. We didn't do that.

I spent most of my weekend away from my family because of your client's incivility and to avoid any claim that we were refusing to attend this week's depositions by fiat. I even wrote a letter to that effect to you earlier today.

We will immediately correct any attempt to misstate our position tomorrow to the Court. You need to be more accurate in these matters. This is not the first time I've had to correct a matter of this sort.

Thank you,  
John Durrant

John Durrant  
Founder / CEO

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Sent from my iPhone

On Jul 10, 2023, at 4:57 PM, Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)> wrote:

Hi John,

Please see the attached correspondence.

Best,  
Michael

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**From:** John Durrant <[john@durrantlawfirm.com](mailto:john@durrantlawfirm.com)>  
**Sent:** Saturday, July 8, 2023 4:25 PM  
**To:** Gershoni, Michael <[Michael.Gershoni@arnoldporter.com](mailto:Michael.Gershoni@arnoldporter.com)>  
**Cc:** 'Zak Kurtz' <[zak@sneakerlawfirm.com](mailto:zak@sneakerlawfirm.com)>; xNIKE v. Kiy <[xNIKEv.Kiy@arnoldporter.com](mailto:xNIKEv.Kiy@arnoldporter.com)>  
**Subject:** RE: NIKE v. BY KIY, et al. - 1:23-cv-02431-VM (S.D.N.Y.)

External E-mail

Please see attached correspondence.

**John Durrant, Esq.**  
*Founder and CEO*

**<image001.png>**  
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<2023-07-10 - M. Gershoni Ltr. to Durrant.pdf>

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